No. 14-116

In the Supreme Court of the United States

LOUIS B. BULLARD, PETITIONER

v.

BLUE HILLS BANK FKA HYDE PARK SAVINGS BANK, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR RESPONDENT

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QUESTION PRESENTED

Whether an order of a bankruptcy court denying confirmation of a bankruptcy plan with leave to file a further amended plan is a "final" order appealable as of right.

AMENDED CORPORATE DISCLOSURE STATEMENT

Respondent is Blue Hills Bank, formerly known as Hyde Park Savings Bank. Blue Hills Bank is wholly owned by Blue Hills Bancorp, Inc., which is a publicly traded company. No other publicly held corporation has a 10% or greater ownership interest in respondent.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is reported at 752 F.3d 483. The opinion of the bankruptcy appellate panel (Pet. App. 18a-36a) is reported at 494 B.R. 92. The orders of the bankruptcy appellate panel declining to certify an appeal to the court of appeals (Pet. App. 16a-17a) and granting leave to appeal to the bankruptcy appellate panel (Pet. App. 37a-45a) are not reported. The opinion of the bankruptcy court (Pet. App. 46a-67a) is reported at 475 B.R. 304.

JURISDICTION

The judgment of the court of appeals was entered on May 14, 2014. The petition for a writ of certiorari was filed on July 30, 2014, and granted on December 12,

2014. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTES INVOLVED

Sections 1307(c)(5), 1321, 1323, 1324, and 1327 of Title 11 and Sections 157, 158, 1291, and 1292(b) of Title 28 of the United States Code, and Federal Rule of Bankruptcy Procedure 3015, are reproduced in a statutory appendix hereto, App., *infra*, 1a-14a.

STATEMENT

I. STATUTORY FRAMEWORK

A. District courts have original jurisdiction of "all cases" arising under the Bankruptcy Code, and "all civil proceedings arising under title 11, or arising in or related to" cases under the Bankruptcy Code. 28 U.S.C. 1334(a) and (b). District courts generally refer bankruptcy cases and "proceedings arising under title 11 or arising in or related to a case under title 11" to the bankruptcy courts, as 28 U.S.C. 157(a) authorizes. "Proceedings" arising under the Bankruptcy Code include "confirmations of plans." 28 U.S.C. 157(b)(2)(L).

When Congress enacted the Bankruptcy Code in 1978, it included several chapters that provide for "confirmations of plans." These include reorganization plans under chapters 11 as well as plans of adjustment for certain individuals and municipalities. Pub. L. No. 95-598, 92 Stat. 2549 (1978). Congress added plans of adjustment for family farmers and fishermen in 1986. Pub. L. No. 99-554, 100 Stat. 3088 (1986).

Chapter 13 permits individuals with regular income and debts below a certain threshold to propose a plan that complies with certain statutory requirements and,

if the plan is confirmed and all payments under the plan are made for a three-to-five-year period, obtain a discharge of debts beyond the relief available in chapter 7 liquidation. See 11 U.S.C. 1301 *et seq.*

Upon filing a chapter 13 petition, a bankruptcy estate is formed, and a debtor's property vests in that estate. 11 U.S.C. 541. Also upon filing, the automatic stay bars actions against the debtor or property of the estate during the pendency of the bankruptcy case. 11 U.S.C. 362, 541. No later than 14 days after filing the petition, a chapter 13 debtor "shall file a plan" for repayment. 11 U.S.C. 1321; Fed. R. Bankr. P. 3015(b). Chapter 13 specifies the requirements and limits of a plan, 11 U.S.C. 1322, and circumstances in which a plan may or may not be confirmed, 11 U.S.C. 1325.

As the only party with authority to propose a plan, the debtor has considerable control over the repayment terms, but only within the statute's boundaries. The United States Trustee must convene a meeting of the chapter 13 creditors. 11 U.S.C. 341(a). Any "party in interest" may object to the confirmation of the debtor's proposed (or amended) plan, including for violating the statutory limits. 11 U.S.C. 1324(a). When the debtor has multiple creditors, each may file its own objection. See *ibid.* After notice and an opportunity to file objections, the court holds a hearing on confirmation of the plan within 45 days after the creditor meeting. See 11 U.S.C. 1324(b).

During this process, the debtor may "modify the plan at any time before confirmation." 11 U.S.C. 1323(a). Upon amendment, "the plan as modified becomes the plan" that is the subject of the confirmation proceeding. 11 U.S.C. 1323(b). A secured creditor "is

deemed to have accepted or rejected * * * the plan as modified, unless the modification provides for a change in the rights of such holder from what such rights were under the plan before modification, and such holder changes such holder's previous acceptance or rejection." 11 U.S.C. 1323(c).

The time period for modifications to a proposed plan in a chapter 13 case continues even after the sustaining of one or several objections to confirmation. After "denial of confirmation of a plan under section 1325," the court may grant "a request made for additional time for filing another plan or a modification of a plan." 11 U.S.C. 1307(c)(5). If the court grants leave to amend the plan, the case is not dismissed. *Ibid.* (noting court "may dismiss a case" if it denies confirmation *and* denies leave to amend). While the case remains pending and further modifications to the plan are considered, the automatic stay remains in effect, 11 U.S.C. 362(c)(2), and the property remains vested in the bankruptcy estate, 11 U.S.C. 1327(b).

In contrast, an order confirming a plan has immediate legal consequences for both the debtor and creditors. Upon confirmation of the plan, its "provisions * * * bind the debtor and each creditor," the property of the estate is vested in the debtor, and, except as provided in the plan, becomes "free and clear of any claim or interest of any creditor provided for by the plan." 11 U.S.C. 1327(a)-(c); see also 11 U.S.C. 1141(a) and (b). An order confirming a plan terminates the automatic stay as to property that revests in the debtor. 11 U.S.C. 362(c)(1).

An order dismissing the case similarly has an immediate effect on the parties' rights. Dismissal of the

case terminates the automatic stay (both as to property of the estate and as to actions against the debtor). 11 U.S.C. 362(c)(1) and (2). Dismissal also vacates all of the bankruptcy court's orders and reinstates any actions undone by the bankruptcy court, such as transfers, avoided liens, or superseded proceedings. 11 U.S.C. 349(b).

B. Two sets of jurisdictional appeal statutes apply in parallel in bankruptcy cases: the bankruptcy-specific section, 28 U.S.C. 158, and the general appellate jurisdictional sections, 28 U.S.C. 1291 and 1292. The two sets "overlap" in bankruptcy cases and "do not pose an either-or proposition." *Conn. Nat'l Bank* v. *Germain*, 503 U.S. 249, 251-254 (1992). Both the general civil and bankruptcy-specific appellate statutes distinguish between final decisions, which are appealable as of right, and interlocutory orders, which are appealable only by leave of court.

Section 158(a) governs appeals from bankruptcy courts to district courts in both "cases and proceedings referred to the bankruptcy judges under Section 157." Section 158 confers jurisdiction of "appeals from final judgments, orders, and decrees" as a matter of right. 28 U.S.C. 158(a)(1). In addition, "with leave of the court," parties may appeal to the district court from "interlocutory orders and decrees[] of bankruptcy judges." 28 U.S.C. 158(a)(3). Section 158 imposes no limit or standard on the district court's exercise of discretion to permit interlocutory appeals. In those circuits that have established a bankruptcy appellate panel (BAP), appeal may be taken to the BAP, with the parties' consent, whenever a district court could have heard the appeal under Section 158(a). See 28 U.S.C. 158(b) and (c). Beyond these paths of appeal, the dis-

trict court may withdraw the reference to the bankruptcy court "in whole or in part" at any time and decide an issue itself. 28 U.S.C. 157(d).

Section 158(d)(1) confers mandatory appellate jurisdiction on the courts of appeals "from all final decisions, judgments, orders, and decrees" entered by district courts and BAPs pursuant to their appellate authority under Section 158(a) and (b). In 2005, Congress added a new provision, Section 158(d)(2), which grants the courts of appeals discretion to accept jurisdiction over direct appeals from the bankruptcy courts in bankruptcy cases and proceedings. The court of appeals may "authorize[] the direct appeal of the judgment, order, or decree" of the bankruptcy court to the court of appeals in any appeal over which the district court or BAP would have appellate jurisdiction, including both final and interlocutory orders appealable under "the first sentence of [Section 158](a)." 28 U.S.C. 158(d)(2). Because the first sentence of Section 158(a) grants district courts discretionary appellate jurisdiction over all "interlocutory orders and decrees" of the bankruptcy court, 28 U.S.C. 158(a)(3), all such interlocutory orders are also within the appellate jurisdiction of the court of appeals.

Direct appeal to the court of appeals is not of right, however. Direct appeal must first be certified by the bankruptcy court, district court, or BAP, "acting on its own motion or on the request of a party." 28 U.S.C. 158(d)(2)(A). In addition, the order may be certified by "all the appellants and appellees (if any) acting jointly," *ibid.*, or, if "a majority of the appellants and a majority of appellees" request, the court is required to make the certification, 28 U.S.C. 158(d)(2)(B). The court or parties may certify the order for direct appeal to the court

of appeals for any of the following reasons: (i) lack of a "controlling decision"; (ii) it involves "a matter of public importance"; (iii) it presents "a question of law requiring resolution of conflicting decisions"; or (iv) immediate review by the court of appeals will "materially advance the progress" of the case or proceeding. 28 U.S.C. 158(d)(2)(A). Even if the order has been certified by the parties or court, direct appeal is permitted only "if the court of appeals authorizes [it]." *Ibid.* Thus, the court of appeals retains control over its docket in deciding whether to hear direct appeals other than those from "final decisions, judgments, orders, and decrees" entered by district courts and BAPs. 28 U.S.C. 158(d)(1).

Alongside Section 158(d), the courts of appeals have the same appellate jurisdiction over decisions of the district courts sitting in bankruptcy as in other civil matters. See *Conn. Nat'l Bank*, 503 U.S. at 251-254. Section 1291 accords jurisdiction to the courts of appeals "from all final decisions of the district courts," except where this Court has direct review. 28 U.S.C. 1291. Under Section 1292(b), a court of appeals has discretionary jurisdiction over an appeal of an otherwise unappealable interlocutory order from a district court. Interlocutory review pursuant to Section 1292(b) is available only if the district court certifies that a case both (i) "involves a controlling question of law" on which "there is substantial ground for difference of opinion" and (ii) an appeal "may materially advance the ultimate termination of the litigation." Upon certification by the district court, the court of appeals may exercise jurisdiction over the interlocutory order at its discretion. 28 U.S.C. 1292(b).

II. Background Of The Case

A. Blue Hills Bank (BHB), formerly known as Hyde Park Savings Bank, is a community bank operating in eastern Massachusetts. It holds a mortgage on a multi-unit residential property in Randolph, Massachusetts, owned by petitioner Louis Bullard. The mortgage secures a promissory note with an original principal amount of $387,000 and a maturity date of June 1, 2035. Petitioner voluntarily filed for chapter 13 bankruptcy on December 14, 2010 in the U.S. Bankruptcy Court for the District of Massachusetts. Petitioner was current with his mortgage payments when he filed for bankruptcy. BHB filed a proof of claim for $346,006.54 on June 17, 2011. The parties disagreed as to the property's value, providing appraisals of $245,000 and $285,000, but they agreed that the property's value had declined to less than the value of BHB's claim. Pet. App. 47a.

With his petition, petitioner had filed a proposed chapter 13 plan, which he superseded by filing three amended plans. Pet. App. 47a-48a; see 11 U.S.C. 1321, 1323(a). The first plan valued the property at $242,500 and listed one other debt, an unsecured claim of $1,712, for municipal water and sewer fees. *See* Ch. 13 Plan (filed Dec. 22, 2010).[1] The first amended plan was filed on March 14, 2011, and reflected two changes: to state more accurately the terms of the mortgage and to increase the dividend to unsecured creditors from 4.0 to 4.5%. See 1st Am. Ch. 13 Plan (filed Mar. 14, 2011). Petitioner filed the second amended plan on October 6,

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[1] This document is erroneously titled "First Amended Chapter 13 Plan."

2011, reflecting the actual value of BHB's claim and a purported decrease in value of the residential property, from $242,500 to $232,453.50, as well as a dividend increase on unsecured claims from 4.5 to 4.68%. See 2d Am. Ch. 13 Plan (filed Oct. 6, 2011). On January 17, 2012, petitioner filed his Third Amended Chapter 13 Plan. This plan again reflected a changed valuation of the property, from $232,463.50 to $245,000, and a modification of the proposed dividend for unsecured creditors, from 4.68 to 5.26%. See 3d Am. Ch. 13 Plan (filed Jan. 17, 2012). The only other debt remained the $1,712 claim for municipal services.

The Third Amended Plan proposed "to bifurcate [BHB]'s secured claim into secured and unsecured components." Pet. App. 48a. The plan would "effectively reduce the secured claim held by [BHB] to the value of the real estate securing the loan" on the date of the proposed amended plan, *i.e.*, approximately $80,000 to $100,000 less than the amount of principal outstanding, depending on the court's findings as to the property's value. *Id.* at 47a-48a. Petitioner represented that he was fully able to continue making the same monthly payments on the mortgage as he had prior to filing for bankruptcy, and he proposed in his amended plan to continue paying those same monthly payments directly to BHB. *Id.* at 48a. The only difference between the proposed plan and the existing mortgage was that petitioner would cease payments 35 to 38 months earlier. The written-down portion of the outstanding principal would "be treated consistently with all other claims," *i.e.*, as an unsecured claim that "would receive a dividend of approximately 5.26%" for the five-year term of the plan but then be discharged at the conclusion of the plan. *Id.* at 39a, 48a. Accordingly, BHB would receive

approximately $4,208 to $5,260 on the now-unsecured portion of the mortgage instead of approximately $80,000 to $100,000, even though petitioner was fully capable of repaying the mortgage in full according to its original terms. Any recovery in the market value of the residence would, under the proposed plan, inure exclusively to petitioner's benefit.

BHB, which had objected to the First and Second Amended Plans, objected to the Third Amended Plan as well on February 16, 2012. Each of these objections, like each amended plan and motion to amend, was filed in the same bankruptcy case initiated by petitioner's bankruptcy petition, and served on participants through ECF filing and regular mail. *E.g.*, Obj. to Conf. of 1st Am. Ch. 13 Plan at 4 (June 17, 2011).

The bankruptcy court held a hearing on April 26, 2012, and issued an opinion on July 24, 2012, denying confirmation to the Third Amended Plan but granting petitioner leave to file a further amended plan. Pet. App. 46a-67a. Recognizing petitioner's proposal as a "hybrid" plan, the bankruptcy court found that the Third Amended Plan would violate BHB's rights as a secured creditor and impermissibly allow petitioner to modify BHB's secured claim under 11 U.S.C. 1322(b)(2). *Id.* at 49a-67a. The bankruptcy court further concluded that petitioner's plan maintained payments exceeding the plan's duration under 11 U.S.C. 1322(b)(5). *Ibid.* Under the proposed hybrid plan, "[p]ut simply, the debtor [sought] to 'strip off' a portion of the lien without full repayment." *Id.* at 52a. Discussing whether hybrid plans were permissible under chapter 13, the bankruptcy court acknowledged that "[s]everal bankruptcy courts in this circuit have answered the question in the affirmative, * * * while other courts, including

the United States Court of Appeals for the Ninth Circuit, have answered with a resounding 'no.'" *Id.* at 56a (citations omitted). The bankruptcy court agreed with the latter, determining that Sections 1322(b)(2) and (b)(5) are "mutually exclusive" and bar confirmation of a plan that proposes to "modify the rights of the secured claim holder" but fails to repay the secured portion of the claim within the term of the plan. *Id.* at 49a-66a.

Because the Third Amended Plan did not comply with the requirements of 13 U.S.C. 1322, the bankruptcy court concluded that the plan could not be confirmed over BHB's objection. Pet. App. 66a. The bankruptcy court did not dismiss the case, however, but rather "direct[ed] the Debtor to file a further amended plan within thirty days." *Id.* at 67a; cf. 11 U.S.C. 1307(c)(5) (noting case is not dismissed if amendment is authorized). The order accompanying the bankruptcy court's opinion informed petitioner that the case would be dismissed if petitioner did not propose "a further amended plan by August 23, 2012." See Bankr. Ct. Order (filed July 24, 2012).

B. Two days before the deadline to file an amended plan, petitioner noticed an appeal to the Bankruptcy Appellate Panel of the First Circuit (BAP).[1] The BAP granted leave to appeal the interlocutory order under 28 U.S.C. 158(a)(3). Pet. App. 37a-45a. After briefing, the BAP affirmed the bankruptcy court's conclusion

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[1] The bankruptcy court granted petitioner's motion to extend the time to file an amended plan indefinitely pending the outcome of the appeal. See Order (filed Aug. 23, 2012).

that a hybrid plan cannot be confirmed under chapter 13. *Id.* at 18a-36a.

At the outset, the BAP observed that, under First Circuit precedent, "typically an order denying confirmation of a chapter 13 plan is not a final order if a debtor is free to propose an alternative plan." Pet. App. 42a. The BAP held that it nonetheless had permissive jurisdiction over petitioner's interlocutory appeal under 28 U.S.C. 158(a)(3) "as informed by 28 U.S.C. 1292(b)." *Ibid.* Noting that petitioner "explain[ed] that the issue presented on appeal * * * controls the outcome of the case because the appeal will decide whether he can confirm a plan or dismiss his case," the BAP found the appeal involved a "controlling question of law."[3] *Id.* at 43a. Further, because reported cases reflected "not unanimous" conclusions on whether hybrid plans complied with the Bankruptcy Code, the "substantial ground for difference of opinion" also weighed in favor of accepting the appeal. *Id.* at 43a-44a. Lastly, the BAP agreed that hearing the appeal would materially advance the case because the BAP would either find his plan confirmable or cause him to dismiss his case for want of a confirmable plan. *Id.* at 44a-45a. The BAP noted that requiring petitioner to await dismissal of the case to appeal "could potentially result in the loss of the

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[3] Petitioner did not stipulate before the bankruptcy court, before filing his notice of appeal, that he would dismiss his case if the Third Amended Plan was not confirmed. Nor did he so stipulate before the BAP. Rather, petitioner stated the view (in his motion for leave to appeal) that "there [was] no alternative plan that the debtor could propose that would achieve his goals in reorganizing his financial affairs." BAP Am. Mot. for Leave to Appeal 4 (Aug. 22, 2012).

[Randolph] property" if he was unable to secure a stay pending appeal. *Ibid.*[4]

The BAP issued its merits opinion on May 24, 2013, affirming the bankruptcy court's holding that a hybrid plan is not confirmable. Pet. App. 18a-36a. The BAP stressed the importance of reading together "all pertinent [Bankruptcy] Code sections touching on treatment of secured claims in chapter 13," including 11 U.S.C. 506(a), 1322, 1325, and 1328. *Id.* at 25a-26a. The BAP observed that the bifurcation of BHB's rights amounted to a "serious modification" under Section 1322(b)(2). *Id.* at 28a & n.11 (quoting *Nobelman v. Am. Sav. Bank*, 508 U.S. 324, 331 (1993)). The BAP explained that a debtor "cannot employ both [Sections] 1322(b)(2) and (5) to reduce [a creditor]'s secured claim and, at the same time, pay that [modified] secured claim over a period beyond the plan's term." *Id.* at 36a. The BAP further noted that, whereas Congress had expressly allowed hybrid plans in chapter 11 and chapter 12 bankruptcies, it had not done so for chapter 13 bankruptcies. *Id.* at 35a.

C. Petitioner noticed an appeal to the First Circuit on June 19, 2013. The notice of appeal did not assert the jurisdictional basis, though the docketing statement asserted that the BAP's order was "a final decision on the merits." On June 24, 2013, a week after it had filed its notice of appeal, petitioner also moved the BAP to certify the appeal pursuant to 28 U.S.C. 158(d)(2)(A); on

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[4] Petitioner likely would not have been able to demonstrate need for a stay here given that he represented that he was able to continue making the same monthly mortgage payments. Pet. App. 47a-48a.

July 9, 2013, the BAP denied the motion, stating: "As the Panel has rendered its Judgment on the year-old appeal and Bullard has already filed his notice of appeal to the First Circuit, the requested certification is unnecessary." Pet. App. 16a-17a.

The First Circuit ordered petitioner to show cause why the case should not be dismissed for want of jurisdiction. Pet. App. 3a. On May 14, 2014, after briefing and oral argument, the First Circuit concluded that it lacked jurisdiction and dismissed the appeal. *Id.* at 1a-15a.

The court of appeals acknowledged that the merits question—whether a hybrid plan is acceptable under chapter 13—was a "difficult, unsettled question." Pet. App. 1a, 3a-4a & n.1. Nevertheless, the court of appeals recognized that it had "jurisdiction only if the BAP's order rejecting Bullard's proposed plan [was] a final order" within 28 U.S.C. 158(d)(1). *Id.* at 4a.

Adopting the majority approach followed by the Second, Eighth, Ninth, and Tenth Circuits, the court of appeals held that an order denying confirmation of a chapter 13 plan is not final "if the case has not been dismissed and the debtor remains free to propose another plan." Pet. App. 6a. The bankruptcy court's order was not "final," the court reasoned, "so long as the debtor remain[ed] free to propose an amended plan." *Id.* at 7a. The court of appeals observed that there were outstanding issues related to plan confirmation because "[t]he bankruptcy court gave Bullard a thirty-day deadline to file an amended plan" and, once petitioner did so, "his creditors [would] have an opportunity to file objections," on which the bankruptcy court would have to rule. *Id.* at 7a-8a. "Essentially every-

thing remains unresolved in the Chapter 13 bankruptcy below. * * * [A]n order cannot sensibly be final when it not only fails to dismiss the underlying case but additionally advises that a party may revise its own court filings." *Id.* at 8a (quoting *Mort Ranta* v. *Gorman*, 721 F.3d 241, 258 (4th Cir. 2013) (Faber, J., dissenting)) (alteration in original).

The court of appeals rejected petitioner's contention that he was entitled to an appeal because the Third Amended Plan was the "only feasible plan," observing that "Congress laid out other options for him—options that he did not pursue." Pet. App. 8a-9a. Specifically, petitioner had chosen not to follow either of the two "safety valves" that would have enabled review by the court of appeals: request certification to appeal the bankruptcy court's order directly to the First Circuit under 28 U.S.C. 158(d)(2), or appeal to the district court followed by a request for certification for interlocutory appeal under 28 U.S.C. 1292(b). *Id.* at 9a. The First Circuit explained that these discretionary safety valves were adequate to address "situations in which delaying review by the court of appeals would be unjust or inappropriate." *Ibid.* Indeed, the First Circuit noted the irony inherent in petitioner's argument that the court of appeals should find mandatory appellate jurisdiction under Section 158(d)(1) on the ground that "his appeal present[ed] a pure question of law that is unsettled" where "that is precisely the scenario envisioned for certification of a direct appeal under [Section] 158(d)(2)(A)(i)," but which leaves exercise of that jurisdiction in the appellate court's discretion. *Id.* at 10a. The court further observed that, by denying an absolute right to immediate appeal when the debtor retained the right to amend his plan, the appellate statute

"encourages, to the greatest extent possible," negotiation of "a mutually agreeable plan without requiring appellate intervention." *Id.* at 9a.

The court of appeals rejected petitioner's argument regarding alleged inefficiencies of delaying appeal, observing that "[a]ny rule that routinely treats the denial of confirmation as a final order would introduce its own form of inefficiency" by creating a "presumption of finality" that "would clog the appellate dockets with issues that could, and should, be decided elsewhere." Pet. App. 11a-13a & n.7.

SUMMARY OF ARGUMENT

The bankruptcy court's order denying confirmation of petitioner's third amended chapter 13 plan, with leave to file a further amended plan, had none of the hallmarks of a "final" order that terminates the court's association with the action. The order, which expressly invited petitioner to propose a further amended plan, did not end the plan confirmation proceeding, and no party's legal rights were affected. Petitioner nonetheless invokes the same arguments for deeming this interlocutory order to be "final" for purposes of appeal that the Court has considered and rejected on numerous occasions.

There is no reason for the Court to depart from its well-established principles of finality in this case. Congress's choice to use the term "final," which had a well-established meaning in Section 1291, indicates its intent that an order be appealable as of right only when it terminates the court's involvement with the action. Congress provided broad avenues for appellate review of interlocutory bankruptcy court orders, but gave the reviewing court discretion whether to accept such re-

view. Petitioner's argument, if accepted, would significantly undermine this statutory structure.

I. Congress and this Court have long recognized that "final," for the purposes of appellate jurisdictional statutes, means that a judicial action has been terminated. Accordingly, since the Judiciary Act of 1789, the default rule has been that a party may take a single appeal after final judgment to seek review of any alleged error at any stage of the proceeding. The single-appeal rule, and consequent disfavor of piecemeal mid-proceeding appeals, furthers important policy interests and guarantees "efficient administration of justice in the federal courts." *Digital Equip. Corp.* v. *Desktop Direct, Inc.*, 511 U.S. 863, 868 (1994).

When Congress enacted the bankruptcy appellate jurisdiction statute, 28 U.S.C. 158, it consciously employed the word "final" when proscribing the class of rulings appealable as of right, choosing a word imbued with over 200 years of unbroken clarity. Congress also knowingly accounted for the fact that any bankruptcy case is a complex conglomeration of smaller controversies involving different stakeholders by granting appellate jurisdiction not only from orders terminating a bankruptcy "case" but also those that terminate "proceedings." 28 U.S.C. 158(a). By using the word "proceeding," Congress carefully paralleled the jurisdictional statutes at the heart of bankruptcy cases, 28 U.S.C. 157(a) and 1334. Accordingly, longstanding finality principles still apply in bankruptcy, but must be assessed with respect to a particular "proceeding." To provide further flexibility for potentially expedient appellate review in bankruptcy cases, Congress also provided broad discretionary authority over interlocutory appeals to all three courts that potentially review

bankruptcy court orders—district courts, bankruptcy appellate panels, and courts of appeal.

II. The bankruptcy proceeding at issue here—the "confirmation[] of [a] plan" proceeding, 28 U.S.C. 157(b)(2)(L)—terminates only when the bankruptcy court has confirmed a chapter 13 plan or dismissed a debtor's case for want of a confirmable plan. Rulings falling short of those outcomes, including rulings denying confirmation but expressly directing that the debtor "shall file a further amended plan," are interlocutory and cannot be appealed as of right.

The Bankruptcy Code's text and structure confirm that the plan confirmation process is a single proceeding that terminates only upon plan confirmation or dismissal of the case. Chapter 13's purpose is approval of a single repayment plan for a consumer debtor, and the entire plan confirmation proceeding contemplates only a single operative plan that may be revised at any time in the debtor's discretion. Creditors may raise objections to the proposed plan, and the debtor may amend his plan or seek a ruling from the bankruptcy court, but the plan confirmation proceeding continues under 11 U.S.C. 1307(c)(5) until the bankruptcy court no longer affords the debtor leave to file a further amended plan. Until confirmation or dismissal, the bankruptcy court has not adjudicated the parties' rights, and there has been no final ruling that terminates the proceeding.

Treating confirmation and dismissal of the case as the two potential "final" outcomes of the confirmation proceeding accords with this Court's consistent teachings under the single-appeal rule. It will ensure that courts of appeals review fully-developed records without having to rule on moot disputes or decide issues

multiple times. It will also effectuate Congress's intent that the reviewing courts have broad discretion to review interlocutory rulings when they deem doing so is important—for example, when a case presents an unsettled question of law. A contrary rule would allow a debtor to take iterative, harassing appeals from plans that differ only in minor, fact-bound respects, such as the slight valuation and percentage changes between petitioner's various plans in this case.

Diluting the finality requirement to authorize appeals when confirmation is denied would contravene Congress's intent and the policies that underlie well-settled jurisprudence about which rulings may be appealed. Broadening the class of final orders to encompass interlocutory chapter 13 plan confirmation denials would result in uncertainty about when appeals must be taken, overburden reviewing courts, and fundamentally alter the careful balance of relative negotiating power among debtors, creditors, and trustees. In particular, petitioner's argument would convert the automatic bankruptcy stay into an automatic stay pending appeal. Congress did not grant an automatic stay to debtors who are unable to propose a confirmable plan.

III. In prior rulings declining to expand the scope of the collateral order doctrine, this Court has repeatedly rejected the arguments upon which petitioner relies. The Court has affirmed that the benefits of the single-appeal rule outweigh the costs, including the potential that some mid-proceeding errors may go uncorrected until the proceeding terminates. And, under well-established precedent, petitioner's plea that the order below was an effective "death knell" to his ability to obtain a confirmed plan does not warrant appeal be-

fore the plan confirmation proceeding has formally terminated.

ARGUMENT

I. WELL-SETTLED FINALITY PRINCIPLES ALSO APPLY IN BANKRUPTCY, BUT WITH RESPECT TO DISCRETE "PROCEEDINGS," RATHER THAN THE WHOLE "CASE"

Congress limited appeals of right in bankruptcy to "final" orders. 28 U.S.C. 158(a) and (d)(1). By using the term "final," which has a well-established meaning in statutes granting appellate jurisdiction, Congress made clear its intent that only orders that terminate the relevant judicial action are immediately appealable without leave of the reviewing court. At the same time, Congress made appellate review in bankruptcy more flexible in two important ways. First, appellate jurisdiction in bankruptcy applies to discrete "proceeding[s]," as well as the entire bankruptcy "case." Thus, an order terminating a "proceeding" is immediately appealable as of right, without awaiting termination of the entire "case." Second, Congress granted reviewing courts greater discretion to hear appeals from interlocutory orders in bankruptcy cases. Petitioner's position (Br. 19) that every order resolving a "discrete dispute" qualifies as a "final order" immediately appealable as of right is inconsistent with both Congress's use of the term "final" and its grant of discretion to the appellate courts whether to review interlocutory bankruptcy orders.

A. This Court Has Consistently Reaffirmed That, With Very Few Exceptions, A "Final" Decision, Appealable Of Right, Is One That Terminates The Action

The "general rule" is that a party "is entitled to a single appeal, to be deferred until final judgment has been entered, in which claims of district court error at any stage of the litigation may be ventilated." *Digital Equip.*, 511 U.S. at 868. Indeed, this Term, the Court reiterated that the default "core" criterion for when a ruling is final and appealable as of right is that the ruling "terminate[s] an action." *Gelboim* v. *Bank of Am. Corp.*, No. 13-1174, slip op. 2 (Jan. 21, 2015); see also *Coopers & Lybrand* v. *Livesay*, 437 U.S. 463, 476 (1978) (holding that an order is final for appellate jurisdiction when it "terminate[s] the entire litigation").

The principle that piecemeal, mid-proceeding appeals are disfavored, *e.g.*, *Will* v. *Hallock*, 546 U.S. 345, 350 (2006), traces its roots to chapter 20, § 22 of the Judiciary Act of 1789, enacted by the First Congress, which provided that appeal would lie only from "final judgments and decrees," 1 Stat. 73, 84. The single-appeal rule, currently codified at 28 U.S.C. 1291, "has changed little since then." *Midland Asphalt Corp.* v. *United States*, 489 U.S. 794, 798 (1989). Section 1291 now provides the courts of appeals with "jurisdiction of appeals from all final decisions of the district courts." This Court has "consistently interpreted this language" as it did the reference to "final" in the first Judiciary Act: to require "that a party must ordinarily raise all claims of error in a single appeal following final judgment on the merits." *Firestone Tire & Rubber Co.* v. *Risjord*, 449 U.S. 368, 373-374 (1981) (Section 1291); *Luxton* v. *N. River Bridge Co.*, 147 U.S. 337, 341 (1893)

(under § 22 of the first Judiciary Act, "[t]he case is not to be sent up in fragments by successive writs of error"). "The general principle of federal appellate jurisdiction, derived from the common law and enacted by the First Congress, requires that review of nisi prius proceedings await their termination by final judgment." *Abney* v. *United States*, 431 U.S. 651, 656-657 (1977) (quoting *DiBella* v. *United States*, 369 U.S. 121, 124 (1962)).

The single-appeal rule "is the means for achieving a healthy legal system." *Cobbledick* v. *United States*, 309 U.S. 323, 326 (1940). Accordingly, this Court has recognized that the rule furthers "efficient administration of justice in the federal courts." *Digital Equip.*, 511 U.S. at 868. Mid-proceeding appeals are disruptive, "adding costs and diminishing coherence." *Johnson* v. *Jones*, 515 U.S. 304, 309 (1995). The single-appeal rule ensures that courts of appeals have fully-developed records on which to decide cases and do not waste time deciding mooted or unnecessary issues. See *ibid.* Prohibiting mid-proceeding appeals "reduces the ability of litigants to harass opponents and to clog the courts through a succession of costly and time-consuming appeals," *Flanagan* v. *United States*, 465 U.S. 259, 263-264 (1984), and permits "trial judges to do their basic job—supervising trial proceedings," *Johnson*, 515 U.S. at 309.

The collateral order doctrine carves out a "narrow and selective" exception to the single-appeal rule that deems certain orders "final" where, in addition to meeting other requirements, failure to grant immediate review "would imperil a substantial public interest" or "some particular value of a high order." *Will*, 546 U.S. at 350, 352-353. Although the Court "has been asked

many times" to expand the collateral order doctrine, *id.* at 350, the Court has refused, *Digital Equipment*, 511 U.S. at 865, precisely because of the costs to the judicial system. See III, *infra*.

There is no reason to believe that, when Congress enacted Section 158, it departed from the well-established rule that a "final" order or decision is, with very few exceptions, one that "terminate[s] the entire litigation." *Coopers & Lybrand*, 437 U.S. at 467.

B. Longstanding Finality Principles Apply In Bankruptcy, But Authorize Appeal Of Right From Decisions That Terminate A "Proceeding," As Well As A "Case"

Although Congress also imposed the same requirement of finality for appeals of right in bankruptcy, the bankruptcy appeal statute applies that requirement to discrete "proceeding[s]," as well as the entire bankruptcy "case." 28 U.S.C. 158(a). By treating the smaller judicial unit of a "proceeding" as the relevant unit for purposes of finality, Congress recognized that a bankruptcy case is a conglomeration of many discrete actions. Congress also allowed for appellate review of a greater range of interlocutory orders, by granting the district courts and courts of appeals discretion to review almost any interlocutory order of the bankruptcy court. To the extent petitioner argues that Congress's use of the term "order" in Section 158(a) eliminates the single-appeal rule even as to "proceedings" (Br. 17-19) or warrants treating every "discrete dispute" as a separate judicial unit for the finality analysis (*id.* at 19), petitioner's position would effectively eliminate the requirement of finality and would significantly undermine the special provisions Congress enacted to allow broad

avenues for interlocutory review in bankruptcy, but under the control of the reviewing court.

1. As a general matter, every civil action in a federal court is viewed as a single "judicial unit," and the "final decision" giving rise to a right of appeal must constitute a "ruling[] that terminate[s] [that] action." *Gelboim*, slip op. 2, 9. Because the entire case is a "single judicial unit," only one appeal lies, even when the action contains multiple claims and multiple parties. See *Sears, Roebuck & Co.* v. *Mackey*, 351 U.S. 427, 431-432 & n.3 (1956); *In re Saco Local Dev. Corp.*, 711 F.2d 441, 443 (1st Cir. 1983).

When Congress used the word "final" in Section 158, it did so given almost 200 years of understanding of the "general principle of appellate jurisdiction, derived from the common law and enacted by the First Congress": a "final" ruling is one that "terminate[s] the entire litigation." See *Coopers & Lybrand*, 437 U.S. at 467; *Abney*, 431 U.S. at 656-657 (citation and internal quotation marks omitted). "[W]hen judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its judicial interpretations as well." *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Dabit*, 547 U.S. 71, 85-86 (2006) (alteration, citation and internal quotation marks omitted). Where, as here, Congress employed the exact same word, one carrying a lengthy history of consistent legislative and judicial understanding, "final" means what "final" has always meant.

The difference in bankruptcy lies not in whether the order in question must be "final" in the sense that it terminates the proceeding, but in the scope of the judi-

cial unit to which the finality requirement applies. In the bankruptcy context, the relevant judicial unit is the bankruptcy "proceeding."

"Viewed realistically, a bankruptcy case is simply an aggregation of controversies," involving many "present and potential contestants" and claims. *Martin Bros. Toolmakers* v. *Indus. Dev. Bd. (In re Martin Bros. Toolmakers, Inc.)*, 796 F.2d 1435, 1437 (11th Cir. 1986). In that respect, a bankruptcy case is like a multidistrict litigation (MDL), in which several distinct judicial actions are brought together. The policies behind the single-appeal rule, however, do not require waiting for all matters to be finally disposed of before appeal can be taken in any one. See *Gelboim*, slip op. 6-10 (holding that dismissal of complaint "without leave to amend" was "final," even though the MDL remained ongoing, because the District Court had "completed its adjudication of petitioners' complaint and terminated their action"). Likewise, the "complex multi-party litigation" character of a bankruptcy "case" is sufficient to "warrant treating an order which resolves" a discrete controversy within that case "as 'final' and appealable." *Saco*, 711 F.2d at 444.

Congress addressed this "aggregation" feature of bankruptcy cases by separately granting the federal courts jurisdiction, including appellate jurisdiction, over individual "proceedings" within a bankruptcy "case." In Section 1334, for example, Congress granted the district courts jurisdiction over "all cases under title 11" as well as over "all civil proceedings arising under title 11 or arising in or related to cases under title 11." 28 U.S.C. 1334(a) and (b). Likewise, in Section 157, Congress authorized the district courts to refer "any or all cases under title 11 and any or all proceed-

ings arising under title 11" to the bankruptcy courts. 28 U.S.C. 157(a). And Section 158 similarly grants appellate jurisdiction to district courts, BAPs, and courts of appeal over orders of bankruptcy judges "entered in cases and proceedings" referred to them. 28 U.S.C. 158(a) and (b); 28 U.S.C. 158(d)(1) and (2)(A) (incorporating jurisdiction of Section 158(a)).

Thus, for a bankruptcy proceeding, an order by which the lower court has "completed its adjudication of petitioners' complaint and terminated their action" is "final" and appealable as of right. *Gelboim*, slip op. 7. The bankruptcy court's order denying confirmation to petitioner's proposed plan, but granting him leave to amend, did not "complete[] its adjudication" of, or "terminate[]," the plan confirmation proceeding and was therefore not "final."

2. While Congress maintained the requirement that an "order" be "final," *i.e.*, terminate the bankruptcy "proceeding," to be immediately appealable as of right, Congress separately provided for discretionary review of interlocutory bankruptcy orders far beyond what is provided in general civil litigation.

Sections 158(a) and (d) draw a sharp distinction between appellate jurisdiction over "final" and "interlocutory" orders in bankruptcy. Congress granted district courts and BAPs mandatory appellate jurisdiction over appeals from "final judgments, orders, and decrees * * * entered in cases and proceedings," and in turn gave the courts of appeal mandatory appellate jurisdiction over "final decisions, judgments, orders, and decrees" entered by the district court or BAP in exercise of their intermediate appellate authority. 28 U.S.C. 158(a)(1), (b)(4) and (d)(1). Congress also granted dis-

trict courts and BAPs mandatory jurisdiction over a single type of interlocutory order, those that "increas[e] or reduc[e] the time periods" in which the debtor in a chapter 11 bankruptcy has exclusive authority to propose a plan. 28 U.S.C. 158(a)(2). For all other "interlocutory orders and decrees," Congress granted the district courts and BAPs appellate jurisdiction only "with leave of the court." 28 U.S.C. 158(a)(2) and (3). In 2005, Congress extended to the courts of appeals jurisdiction to hear direct appeals in all "appeals described in the first sentence of subsection (a)," including all interlocutory orders of bankruptcy judges, but only "if the court of appeals authorizes the direct appeal" and either the parties or lower court certify that one or more factors from a more generous list than Section 1292(b) is met. 28 U.S.C. 158(d)(2).

In addition to review by appeal, district courts retain broad authority to address any issue, at any point within a bankruptcy proceeding. The district courts have original jurisdiction in all bankruptcy cases and proceedings, 28 U.S.C. 1334, and bankruptcy judges have jurisdiction only to the extent the district court refers the case or proceeding to the bankruptcy court, 28 U.S.C. 157(a). At all times, the district court retains discretion to "withdraw, in whole or in part, any case or proceeding." 28 U.S.C. 157(d).

As a result of the combined authority to withdraw proceedings in part or hear appeal of any interlocutory order, the district court has plenary discretion to decide or review any issue in a bankruptcy proceeding at any time. The courts of appeals would then have further appellate jurisdiction from any decision of the district court, either as of right if the district court's own order is "final," 28 U.S.C. 158(d)(1) and 1291, or by certifica-

tion if the district court's own order is interlocutory, 28 U.S.C. 1292(b).

By making review of interlocutory orders by the district courts, and courts of appeal, broadly available in bankruptcy proceedings, Congress provided the parties to such proceedings "safety valves" beyond even what exists in ordinary civil proceedings. *Mohawk Indus., Inc.* v. *Carpenter*, 558 U.S. 100, 111 (2009).

3. Petitioner urges the Court to adopt a rule of "flexible" finality with respect to bankruptcy proceedings far beyond the flexibility Congress has already provided. Petitioner argues that "the term 'final' in Section 158(d)(1) has a similar, *but broader*, meaning than in Section 1291," because, in part, the term "'[o]rder' is *broader than* the other terms in Section 158(d)(1)," including the word "decision." Pet. Br. 13, 18-19 (emphasis added). Petitioner's proposal lacks support in the statutory text or structure, and it would instead undermine that structure by rendering largely superfluous the specific statutory scheme governing interlocutory appeals in bankruptcy. Petitioner's amici disagree with petitioner on this point, and rightly so. See U.S. Br. 12 ("The meaning of the word 'final' does not vary from one jurisdictional statute to another."); BOA Br. 12 ("This rule does not require reading the word 'final' in § 158 to mean anything different than it means in § 1291."). The Court should give effect to the well-established requirements of "finality" in Section 158(a)(1) and (d)(1) but apply that requirement to the "proceeding" from which the appeal is taken, while allowing the district courts and courts of appeals to exercise their discretion when to hear appeal from interlocutory orders that do not "terminate" the proceeding.

Petitioner's textual argument for ascribing a "broader" meaning to the word "final" in Section 158—that Section 158 permits appeal from final "orders" in addition to final "decisions," as provided in Section 1291 (Br. 18-19)—does not bear the weight petitioner places upon it. The listing of "judgments, orders, and decrees" as potentially final rulings in Section 158(a) and "decisions, judgments, orders, and decrees" in Section 158(d)(1) does not mean that the respective ruling need be any less "final" than a "final decision" under Section 1291. The broader listing in Section 158 merely reflects that a broader array of rulings may terminate a bankruptcy "proceeding."

Petitioner's attempt to create space between the terms "order" and "decision," and to suggest that the former is somehow broader than the latter, is unavailing. This Court long ago declined to ascribe significance to the labeling of a judicial document as an "order" instead of a "decision." *United States* v. *Thompson*, 251 U.S. 407, 412 (1920). Similarly, the relevant version of Black's Law Dictionary, from the time Section 158(a) was enacted, confirms that "decision" is a "comprehensive term having no fixed, legal meaning" that is "broad enough" to encompass "judgments" and "orders." *Black's Law Dictionary* 366 (5th ed. 1979). Thus, there is no support for the suggestion that the term "order" in Section 158(a)(1) or (d)(1) is necessarily broader than the term "decision" in Section 1291. The very same statutory provision references "interlocutory orders and decrees," which are appealable only "with leave of the court." 28 U.S.C. 158(a)(3). Therefore, the word "order" cannot do the work petitioner requires of it. Rather, the critical term is the adjective, "final" or "interlocutory."

Congress's care in crafting a special statutory regime for appealing interlocutory orders in bankruptcy, which is more liberal than Section 1292(b), further counsels against reading "final" more "broadly" in Section 158(a)(1) and (d)(1). Because the courts of appeals have discretion to hear appeals from virtually all interlocutory bankruptcy court orders, there is less need of immediate appeal as of right. Deeming otherwise interlocutory orders "final" only deprives the district courts and courts of appeal of the discretion to decline review in an individual case, such as where it is purely fact-based or likely to be mooted by later developments in the case.

Petitioner and his amicus' suggestion of other standards for finality—that "substantive rights" were "conclusively determined," (Pet. Br. 19; U.S. Br. 11, 22), or a "discrete dispute" was "conclusively resolved," (Pet. Br. 19; U.S. Br. 19-22)—lack the clarity of this Court's single-appeal rule, which focuses on whether the order in question "terminates" the relevant judicial unit, and threaten to blur the line between final orders appealable as of right and interlocutory orders appealable only with leave of court. This Court has frequently stressed the importance of clarity in jurisdictional statutes, including appellate jurisdiction. *E.g.*, *Ray Haluch Gravel Co.* v. *Cent. Pension Fund of Int'l Union of Operating Eng'rs & Participating Emps.*, 134 S. Ct. 773, 780 (2014). Those concerns apply equally to bankruptcy appeals, and the Court should reject petitioner's suggestion to "broaden" the concept of finality in Section 158(a) and (d).

II. "CONFIRMATION[] OF [A] PLAN" IS THE RELEVANT JUDICIAL UNIT TO WHICH THE FINALITY REQUIREMENT APPLIES, AND THAT PROCEEDING TERMINATES WHEN A PLAN IS CONFIRMED OR THE CASE IS DISMISSED

The text and structure of the Bankruptcy Code make clear that the plan confirmation process is a single proceeding and the relevant judicial unit for assessing finality. This proceeding terminates only upon plan confirmation or dismissal of the case. Prior to those events, the debtor can amend his plan at any time, including after a court denies confirmation of a proposed plan by sustaining an objection.

Permitting immediate appeal of iterative steps within this unified proceeding—for example, from an order denying one of a series of modified proposed plans with leave to further amend—would create uncertainty about when appeal must be taken and impose significant burdens on the courts of appeal. It would, moreover, disrupt Congress' carefully balanced debtor-creditor relationships in the reorganization and adjustment chapters, which are designed to encourage negotiation and compromise. Petitioner effectively seeks a categorical right not just to the usual automatic stay, but also to an "automatic stay pending appeal," even when the bankruptcy court has ruled that the debtor's proposed plan cannot be confirmed. Nothing in the Bankruptcy Code suggests that Congress intended to grant debtors such unilateral power.

A. The Text And Structure Of The Bankruptcy Code Demonstrate That The Plan Confirmation Process Is A Single Judicial "Proceeding" To Which The Finality Analysis Applies

A chapter 13 plan confirmation process has not reached finality when the bankruptcy court sustains a particular confirmation objection, thus "denying confirmation" of a plan, but the debtor is free to propose an amended plan. Instead, the chapter 13 confirmation process terminates when a plan is confirmed or when the debtor is no longer free to propose an amended plan because the case has been dismissed. Allowing appeal from interim rulings short of those outcomes contravenes this Bankruptcy Code and this Court's long-held understanding of finality.

A statute must be construed in light of its text and structure. *N.Y. State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U.S. 645, 656 (1995); *Conn. Nat'l Bank*, 503 U.S. at 253. The plain text of the Bankruptcy Code, as confirmed by the statutory structure, makes clear that the confirmation process constitutes a single "proceeding." The debtor retains the right to amend a plan prior to confirmation or dismissal, and, until one of those two events, there is no final resolution of the parties' rights.

1. *Throughout the confirmation process, the plan is a single evolving document, which may undergo revision even after an initial denial of confirmation*

As discussed above, Section 158(a)(1) provides for appeals from final judgments, orders and decrees in "proceedings." In Section 157, Congress identified a non-exclusive list of bankruptcy "proceedings" that

Congress intended could be determined by a bankruptcy court. Congress identified "confirmations of plans" as such "proceedings," 28 U.S.C. 157(b)(2)(L), suggesting that the relevant proceeding concludes with the confirmation order, rather than the intermediate decisions denying a particular plan but permitting the debtor to propose an amendment.

The primary purpose of chapter 13 is to approve a single repayment plan for a consumer debtor, and the statutory structure confirms that the process leading up to such confirmation is a single proceeding. The first requirement of a chapter 13 case is that "[t]he debtor shall file a plan" within 14 days. 11 U.S.C. 1321; Fed. R. Bankr. P. 3015(a). "Plan" is used singularly because only one plan is contemplated. The debtor can modify that single plan as often as she likes before confirmation. 11 U.S.C. 1323(a). After any modification, the plan as modified becomes the plan. 11 U.S.C. 1323(b). As such, by statute, there is only one plan at any given moment, and that plan is subject to continuous revision at the debtor's discretion. The debtor may file an "amended plan" *sua sponte*, in light of changed circumstances, in response to an objection, or following a court ruling upholding an objection. *Ibid.* Petitioner here amended his plan three times, including after the Chapter 13 Trustee objected to certain provisions. Pet. App. 47a-48a.

Even as debtors file amended plans, the Code recognizes any amendment as a continuation of a single proceeding, not a new proceeding. Amendments or objections to amended plans are served in the existing bankruptcy case, by ECF filing and regular mail, rather than through the formal issuance of a summons that would, for example, accompany the filing of a new

complaint. See Fed. R. Bankr. P. 3015(f).[5] Notably, Congress specified that creditor acceptances and rejections of a chapter 13 plan carry through to each later, amended plan. Specifically, "[a]ny holder of a secured claim that has accepted or rejected the plan is deemed to have accepted or rejected * * * the plan as modified," unless the creditor changes position because of changes to the plan's treatment of its rights. 11 U.S.C. 1323(c). Congress also specifically contemplated that further plan amendments would be allowed even after a court had denied confirmation of a particular plan. After "denial of confirmation," the bankruptcy case shall be dismissed only if the bankruptcy court also denies "a request made for additional time for filing another plan or a modification of a plan." 11 U.S.C. 1307(c)(5). Absent a final order denying leave to amend and dismissing the case, the debtor retains the right to amend by merely providing notice. 11 U.S.C. 1323(a); Fed. R. Bankr. P. 3015(b).

Thus, the provisions of the Code clarify that the plan confirmation process is a single, ongoing process of give-and-take between the debtor and creditors, in which the plan remains an evolving document, and prior acceptance or rejection of an earlier version of the plan continues unless the plan is modified.

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[5] The practice in the bankruptcy courts, as exemplified by this case, disproves the Solicitor General's formalistic reading of the Bankruptcy Rules to require service of objections by summons. Each objection—like each motion to amend and amended plan—was filed in the same bankruptcy case and served via ECF filing and regular mail. *E.g.*, Obj. to Conf. of 1st Am. Ch. 13 Plan 4 (June 17, 2011).

The parallel structures of other chapters for reorganization and adjustment of debts reinforce the conclusion that Congress meant the entire plan confirmation process to be a single, iterative judicial unit. Debtors in each of the other adjustment chapters can modify "the plan" at any time before confirmation, and "the plan as modified becomes the plan." 11 U.S.C. 942, 1223(a) and (b). Chapter 11 is illustrative. It has these same modification provisions for "the plan." 11 U.S.C. 1127(a). Just like chapter 13, a creditor's vote for or against a chapter 11 plan remains binding as to all subsequent modifications of the plan unless the creditor takes affirmative action to change its vote after a material modification that affects its rights. 11 U.S.C. 1127(d); Fed. R. Bankr. P. 3019(a); see also *Enron Corp.* v. *New Power Co. (In re New Power Co.)*, 438 F.3d 1113, 1117-1118 (11th Cir. 2006). Although multiple parties may file a plan in chapter 11, 11 U.S.C. 1121(a) and (c), there can ultimately be only one plan confirmed, 11 U.S.C. 1129(c). Thus, there is only one plan proceeding, lasting until confirmation. 28 U.S.C. 157(b)(2)(L).

2. *The parties' legal rights are not affected until plan confirmation or dismissal of the case for lack of a confirmable plan*

When the court denies confirmation of a plan but grants leave to file a further amended plan, there has been no final adjudication of the parties' rights, as is required for a ruling to be final. See *Cunningham* v. *Hamilton Cnty., Ohio*, 527 U.S. 198, 203-204 (1999). A final adjudication is accomplished only through plan confirmation or dismissal of the case because there is no confirmable plan. Short of those two outcomes, the bankruptcy court's ruling is "tentative, informal or in-

complete," and "[a]ppeal is * * * precluded." See *P.R. Aqueduct & Sewer Auth.* v. *Metcalf & Eddy, Inc.*, 506 U.S. 139, 142 (1993) (citation and internal quotation marks omitted).

Confirmation ends the proceeding because the bankruptcy court has finally adjudicated the parties' rights. In granting confirmation, the bankruptcy judge has determined that the plan's contents comport with 11 U.S.C. 1322 and 1325. After confirmation, the plan's "provisions * * * bind the debtor and each creditor," the estate vests in the debtor "free and clear" of creditors' claims and interests, and the automatic stay is lifted as to the revested property. 11 U.S.C. 362(c)(2), 1327(a)-(c). These are tangible, discrete shifts in the legal relationships between the debtor and his creditors and in those parties' rights to the estate.

Similarly, dismissal works an immediate and quantifiable shift on the rights of the debtor and creditors. Once the case is dismissed, the property of the estate and actions against the debtor are no longer subject to the automatic stay. 11 U.S.C. 362(c)(1) and (2). Furthermore, actions taken by the bankruptcy court, including transfers, avoided liens, or superseded proceedings, are undone, and the bankruptcy court's orders are vacated. 11 U.S.C. 349(b).

In contrast, denying confirmation with leave to amend does not affect the parties' rights. Rejection represents only an interim judgment that *specific* plan provisions will not be approved. The Bankruptcy Code makes a careful and meaningful distinction between dismissal and confirmation for that very reason: 11 U.S.C. 1307(c)(5) provides that the court "*may*" dismiss the case if it denies confirmation *and* denies leave to

amend. (Emphasis added.) The debtor may file a plan reflecting slight or substantial modifications, and the bankruptcy court may permit the debtor additional time to "fil[e] another plan or modification of a plan." *Ibid.* The bankruptcy court then must adjudicate whether that plan—whether modified significantly or marginally—is confirmable. Denial, therefore, represents no final adjudication as to the parties' rights. Allowing appeal at this interlocutory juncture would run counter to this Court's longstanding disapproval of "piecemeal appellate review of trial court decisions which do not terminate the litigation." *United States* v. *Hollywood Motor Car Co.*, 458 U.S. 263, 265 (1982).

3. *Deeming denial of a particular plan with leave to amend "final" would be inconsistent with Congress's characterization of similar orders as interlocutory*

To deem orders denying confirmation with leave to amend "final" would also be inconsistent with the express statutory classification of a similar category of orders as "interlocutory." Congress specified that orders granting or denying extensions of the exclusivity period in chapter 11 proceedings are "interlocutory," though nonetheless automatically appealable as of right. 28 U.S.C. 158(a)(2). It would be inconsistent with the statutory structure to deem analogous orders, like those denying confirmation with leave to amend, final.

Section 158(a)(2) specifically provides for appeal of right to the district court "from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in

section 1121," which concerns the chapter 11 debtor's exclusive period to file a reorganization plan, 11 U.S.C. 1121(d). The length of the "exclusivity period" is a central feature of the chapter 11 plan confirmation process, and exclusivity is itself a valuable property right. *Bank of Am. Nat'l Trust & Sav. Ass'n* v. *203 N. LaSalle St. P'ship*, 526 U.S. 434, 455 (1999). Determinations regarding the exclusivity period are made by motion, and thus are separate contested matters within the bankruptcy case. 11 U.S.C. 1121(d); Fed. R. Bankr. P. 9014.

Because the Bankruptcy Code expressly labels bankruptcy court orders resolving these contested matters as "interlocutory orders and decrees," 28 U.S.C. 158(a)(2), the Solicitor General's assertion (Br. 17-22) that every dispute designated a "contested matter" under the Federal Rules of Bankruptcy Procedure is a "proceeding" for purposes of Section 158(a) cannot be correct. If it were, a ruling conclusively resolving a motion to increase or reduce the exclusivity period would be deemed "final" and be appealable as of right, rendering 28 U.S.C. 158(a)(2) superfluous. Like a change in the length of the exclusivity period, denial of confirmation of a particular plan with leave to amend does not conclusively resolve the parties' rights and is therefore "interlocutory."

4. *This case demonstrates that amendments to plans, or denials of confirmation with leave to further amend, are steps within a single proceeding*

This case illustrates how multiple amendments of a single plan comprise a single, continuous confirmation proceeding. Petitioner amended his plan three

times. Parties filed objections to each amended version of the plan, and the bankruptcy court held a hearing to consider Petitioner's Third Amended Plan and objections thereto. Pet. App. 38a-40a, 47a-48a, 51a-67a. Within its order denying confirmation, the bankruptcy court instructed that "[t]he [petitioner] *shall file* a further amended plan," Bankr. Ct. Order (filed July 24, 2012) (emphasis added), because denial of confirmation impelled the confirmation process to continue. Even if petitioner followed the bankruptcy court's instruction and filed a further amended plan with substantial changes, it would have been a Fourth Amended Plan, further amending the same plan as to which the bankruptcy court denied confirmation. Just like the first three plan amendments, this further amendment would be an additional step in the comprehensive confirmation proceeding, not a whole new proceeding.

The plan thus operates similarly to a complaint in civil litigation. Only dismissal of a bankruptcy case or a plan confirmation denial that expressly precludes further plan amendments would perform the same function as dismissal of a civil litigation complaint without leave to amend. As long as the bankruptcy case is pending and no plan has been confirmed, the plan process is ongoing because the debtor may make further amendments.

B. Providing That Only Plan Confirmation And Dismissal Of The Case For Lack Of A Confirmable Plan Are "Final" Is Consistent With The Single-Appeal Rule

The rule that final decisions must have terminated an action is founded on well-settled principles that ensure "efficient administration of justice in the federal

courts." *Digital Equip.*, 511 U.S. at 868. Requiring the parties to await confirmation or dismissal to appeal will effectuate those finality principles and further the efficient administration of confirmation proceedings, consistent with the structure and purpose of chapter 13 bankruptcy.

1. Obliging the parties to await confirmation or dismissal to appeal avoids "additional, and unnecessary, appellate court work" by not allowing appeals from "less developed records" or "appeals that, had the [case] simply proceeded, would have turned out to be unnecessary." See *Johnson*, 515 U.S. at 309. Instead, awaiting a final ruling comports with the "general rule" that parties are "entitled to a single appeal" to raise claims of error from "any stage of the litigation." See *Digital Equip.*, 511 U.S. at 868.

When confirmation is denied but leave to amend granted, the debtor can propose a further amended plan, and creditors or the trustee can renew objections or raise new ones. Thus, without confirmation, each iteration of the plan may raise a combination of old and new issues. If the debtor were allowed to appeal each denial, the appellate court would rule on only the factual and legal issues presented by that specific denied plan. An affirmance would result in a remand for *further* proposals; should the new proposed plan also be unconfirmable, the appellate court would again have to evaluate another set of factual and legal issues, some potentially overlapping with the earlier appeal. This is doubly inefficient: not only must the court of appeals review the same record twice, some previously reviewed issues may have been mooted by later plans. "[P]iecemeal appellate disposition of what is, in practical consequence, but a single controversy" creates the

danger of a "debilitating effect on judicial administration" and must be avoided. *Eisen* v. *Carlisle & Jacquelin*, 417 U.S. 156, 170 (1974).

The better approach is the default rule that denials of confirmation are interim "step[s] toward[s] final disposition of the merits of the case," which merge for a single review from a final ruling. *Abney*, 431 U.S. at 658 (citation and internal quotation marks omitted). After a final ruling—*i.e.*, confirmation or dismissal—the appellate court can review the record and rule once, on every issue that remains actually disputed.

2. Petitioner's various proposed plans in this case demonstrate the danger in authorizing indiscriminate appeals from denial of confirmation where the debtor has leave to amend. The changes between the First and Second Amended Plans here show that modifications are often marginal and fact-based—for example, a property value decrease from $242,500 to $232,453.50 and an increase in dividend from 4.5 to 4.68%. It would be exceedingly inefficient to authorize appeal from every denial of confirmation and force appellate courts to resolve such intricate details, much less to do so potentially many times in the same case. "[A]llowing appeals of right from nonfinal orders that turn on the facts of a particular case thrusts appellate courts indiscriminately into the trial process and thus defeats one vital purpose of the final-judgment rule—that of maintaining the appropriate relationship between the respective courts." *Coopers & Lybrand*, 437 U.S. at 476 (citation and internal quotation marks omitted). Congress has also expressed disfavor for appellate review over fact-bound analyses in bankruptcy: the House Report accompanying Section 158(d)(2) states that the direct-review authority should "rarely be used * * * to bring

to the circuit courts of appeals matters that can be appropriately resolved initially by district court judges or Bankruptcy Appellate Panels," such as "fact-intensive issues," but would allow the courts of appeals to hear direct appeals to "settle unresolved questions of law." H.R. Rep. No. 31, 109th Cong. 1st Sess., pt. 1, 148 (2005).

That some appeals may present unsettled questions of law is no reason to make *all* denials of confirmation appealable. This Court "do[es] not engage in an individualized jurisdictional inquiry." *Mohawk Indus.*, 558 U.S. at 107 (quoting *Digital Equip.*, 511 U.S. at 868). Instead, the Court considers appealability for "the class of claims, taken as a whole," without considering whether "the litigation at hand might be speeded, or a particular injustice averted" by interlocutory appellate review. *Ibid.* (bracketing omitted). Thus, the question is not whether petitioner's Third Amended Plan presented a novel or unsettled legal issue. As the court of appeals noted (Pet. App. 9a-10a), that is the standard for allowing interlocutory review, in an individual case, as a matter of the reviewing court's discretion under Sections 158(d)(2) and 1292. The question, rather, is the effect on appellate courts if *all* such orders were immediately reviewable as of right, including when they present the most modest, fact-specific issues, as was the case with the changes between petitioner's original, first amended, second amended, and third amended plans. Under this Court's precedent, the answer is plainly no.

3. Holding that appeal is permissible only from an order granting confirmation or dismissing a case promotes clarity about when appeals can and must be filed and how courts should coordinate appeals and ongoing

bankruptcy cases. Permitting appeal from denial of confirmation with leave to amend would violate this Court's instruction that rules with "jurisdictional consequences, should above all be clear" and that the "preservation of operational consistency and predictability" is important in defining finality. *Budinich* v. *Becton Dickenson & Co.*, 486 U.S. 196, 202 (1988).

Making denial of confirmation an appealable, final order would be rife with uncertainties for courts and litigants to unravel. For example, if the bankruptcy court sustained one objection to a plan but overruled a second creditor's objection, the plan would be denied. Under petitioner's rule, the ruling would be final and appealable, but the debtor might wish to file another plan and continue proceeding in the bankruptcy court. Petitioner's formulation of the test, whether the order "resolves a disputed issue" (Br. 9), would indicate that such an order would be appealable by the creditor whose objection was overruled. But if the aggrieved creditor could appeal, that raises the question whether the creditor would *have* to notice an appeal to preserve those rights, or might wait to see whether subsequent amendments reduced or eliminated the basis for the objection. If the creditor did appeal, there would be the possibility that the plan under appellate review was no longer the relevant plan due to ongoing proceedings in the bankruptcy court, and the reviewing court might be deciding an issue in one context (the denied plan), whereas subsequent revisions to the plan would present a different context. The more logical approach, and one more consistent with this Court's precedent, is that the creditor's objection merges and follows the plan, permitting appeal from the final order adjudicating *all* the parties' rights with respect to the plan pro-

ceeding, at which point all appeals and cross-appeals can be resolved together. See *Cohen* v. *Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949) (interlocutory rulings are "but steps towards final judgment in which they will merge" for review).

The lack of clarity in petitioner's position is evidenced by the inconsistency in the approaches he and his amici advocate. For example, petitioner argues that the relevant proceeding is the debtor's "plan," and the denial of confirmation of that "plan" is the final, appealable order. Br. 20-22. Under that view, the bankruptcy court's rejection of individual creditors' objections is not separately appealable, at least while the particular plan remains under consideration. By contrast, the Solicitor General asserts that the appropriate judicial unit for assessing finality is the creditor's objection because each "contested matter" under the bankruptcy rules is a separate "proceeding." Br. 20-22. The Solicitor General does not adhere consistently to that position, however. Elsewhere, he suggests that only an order "conclusively resolv[ing] *all* objections to confirmation of a Chapter 13 plan" constitutes a "final" order, (*id.* at 19-22), even though each objection by a creditor is, on his analysis, a separate "contested matter."[4]

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[4] At any rate, the Solicitor General's characterization of objections to a plan as "contested matters" is inaccurate. Petitioner and the Solicitor General misconstrue the general incorporation by reference of Rule 9014 in Rule 3015(f) as converting an individual confirmation objection into a discrete contested matter. By its terms, Bankruptcy Rule 9014 is limited to "contested matter[s] not otherwise governed by [the Bankruptcy Rules]." Objections to plan confirmation *are* expressly governed by Bankruptcy Rule 3015, so they are otherwise governed by the Bankruptcy Rules.

Moreover, allowing immediate appeal at the conclusion of all contested matters would be overly broad and include orders Congress specifically identified as interlocutory. Contested matters constitute a catch-all category for all bankruptcy disputes not specifically enumerated as adversary proceedings. 10 *Collier on Bankruptcy* § 9014.01 (Alan N. Resnick & Henry J. Sommer, eds., 16th ed. 2010). The list of contested matters is "endless" and includes such mundane disputes as a motion to extend a bar date to file a nondischargeability complaint and contested applications for the payment of professional fees. *Ibid.* And for the one contested matter specifically addressed by Congress, increasing or reducing the period of exclusivity, see II.A.3, *supra*, Congress identified the order resolving such a contested matter as "interlocutory." 28 U.S.C. 158(a)(2).

Besides "contested matter," petitioner and his amicus also suggest that the relevant judicial unit is a "discrete dispute." Pet. Br. 16, 19; U.S. Br. 22. But "discrete dispute" lacks any grounding in the statute or rules and is undefined by petitioner. Adopting such an amorphous standard would invite endless litigation about whether a particular order was a "final" resolution of a "discrete dispute." See *Budinich*, 486 U.S. at

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Thus, while objections to confirmation may be "governed by" Rule 9014 for some purposes, they are not "contested matters" *per se*—demonstrated, for example, by the inapplicability of the service rule. In any event, this Court has made clear that the bankruptcy rules are "not jurisdictional," *e.g.*, *United Student Aid Funds, Inc.* v. *Espinosa*, 559 U.S. 260, 270-273 (2010), and they cannot override Congress's identification of "proceedings" as the relevant judicial unit for purposes of appellate jurisdiction.

202 ("jurisdictional consequences" should "be clear" to allow "operational consistency and predictability"). Although petitioner borrows the term "discrete dispute" from a footnote in *Howard Delivery Service Inc.* v. *Zurich American Insurance Co.*, 547 U.S. 651, 657 n.3 (2006), that footnote did not purport to announce a new standard for the "judicial unit" to which the finality test applies. There, the Court held that the determination of a creditor's priority status qualifies as a final decision under Section 158(d), where the creditor agreed to dismiss his claim as valueless if the appeal were not successful. See *ibid.*[1] The Court's use of the term "discrete dispute" borrowed from then-Judge Breyer's decision in *Saco*, where the First Circuit actually identified "a '*proceeding*' within a bankruptcy case as the relevant 'judicial unit' for purposes of finality." 711 F.2d at 444-446 (emphasis added). The term "discrete dispute" was simply another phrase for the statutory term "proceeding," not an independent test for appellate jurisdiction. *Ibid.*

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[1] The Court held that the denial of priority status to a creditor's claim, which rendered that claim valueless, qualified as a final decision. See 547 U.S. at 656. Unlike here, that ruling definitively fixed the value of the creditor's claim, *id.* at 657 n.3, and the creditor stipulated to dismissal of the claim if the appeal did not succeed. Thus, the ruling finally disposed of the creditor's claim and ended the controversy. That is not so here, where petitioner retained the right to file an amended plan.

C. Deeming Denial Of Confirmation "Final" And Appealable As Of Right Would Disrupt Congress's Intent To Promote Negotiated Resolution Between A Debtor And Creditors

The plan confirmation process is designed to promote negotiation among parties with equal bargaining power. The chapter 13 debtor retains significant control over his case because only the debtor may file a plan pre-confirmation. 11 U.S.C. 1321. A chapter 11 debtor receives similar leverage during an exclusive preliminary period, when only she may file a plan. 11 U.S.C. 1121; *203 N. LaSalle*, 526 U.S. at 455. These debtor rights are balanced by the need to obtain expeditious plan confirmation and other parties' right to object to confirmation. 11 U.S.C. 1323; Fed. R. Bankr. P. 3015.

The multiple stages of plan objections and responsive amendments after the debtor files the initial plan, 11 U.S.C. 1323, foster negotiations and consensual resolution among parties to achieve, for their mutual benefit, a viable payment plan. H.R. Rep. No. 595, 95th Cong. 1st Sess. 117-118 (1977). Many objections involve minor disputes regarding valuations and percentages, *de minimis* adjustments made to comply with 11 U.S.C. 1322. The generous amendment process allows parties to negotiate around these minor disputes. So it is here: early in this case, petitioner amended his plan to address objections raised by the United States Trustee, avoiding the need to litigate those particular objections.

Permitting interlocutory appeal each time an objection to a chapter 13 plan is sustained, instead of awaiting confirmation or dismissal, would undercut this balanced system. If granted an automatic right to ap-

peal all denials, the debtor's incentive to negotiate with other parties would be reduced dramatically because the debtor would, correctly, perceive only limited risk from an unsuccessful plan confirmation hearing, as he would retain the automatic right to appeal and extend the automatic stay. See *Zahn* v. *Fink (In re Zahn)*, 526 F.3d 1140, 1143 (8th Cir. 2008) (observing that orders denying confirmation "leave the way open for negotiations and approval of a modified plan"). In contrast, where the debtor cannot appeal immediately as of right from a denial of plan confirmation, a debtor proposing a plan has greater incentives to resolve meritorious plan objections before adjudication. Further, if a bankruptcy court rules against the debtor, the debtor's exclusive right to file a plan remains balanced by the debtor's need or desire to seek consent to that plan from other parties to ease confirmation.

D. Allowing Appeal As Of Right Before Confirmation Improperly Converts The Automatic Bankruptcy Stay Into An Automatic Stay Pending Appeal

The key practical difference between the positions of petitioner and respondent is whether chapter 13 debtors have an absolute right to continuation of the automatic bankruptcy stay while they appeal denial of confirmation or whether they must seek that relief from the courts. Congress did not provide for the automatic stay to continue through the debtor's appeal absent action by the court, and petitioner should not be able to circumvent this limit by taking his appeal, as of right, before dismissal.

The automatic stay, which arises upon the filing of a bankruptcy petition, remains effective until the "case is

closed," the "case is dismissed," or "discharge is granted or denied." See 11 U.S.C. 362(c)(2). In other words, Congress provided that, upon "dismiss[al]" of the case, when a petitioner unquestionably has a right of appeal, the automatic stay terminates while petitioner pursues the appeal, absent relief from the court.

Under petitioner's argument, by contrast, he was entitled to take an appeal two days *before* dismissal and preserve the automatic stay while the appellate courts reviewed the bankruptcy court's conclusion that the Third Amended Plan was not confirmable. Extending the automatic stay during an appeal shifts the costs of appeal to creditors, who must now wait longer to foreclose or receive distributions under a confirmed plan. 11 U.S.C. 362(c)(2)(B), 1327. The debtor retains the right to take an appeal from the bankruptcy court's denial of confirmation if, but only if, the debtor is willing to accept a dismissal, *e.g.*, *In re Salem*, 465 F.3d 767, 773 (7th Cir. 2006), which comes at the cost of losing the automatic stay, 11 U.S.C. 362(c)(2)(B). In this respect, a petitioner whose preferred plan has been denied is like any other appellant who is obliged to apply for a stay pending appeal. Fed. R. Bankr. P. 8005.

Contrary to petitioner's protestations (Br. 29-42), the two available appellate paths (declining to amend and accepting dismissal, or proposing another confirmable plan and appealing at the conclusion from the confirmed plan) are not bizarre at all. First, if a debtor must dismiss the case to pursue appeal of the denial and seek a stay to avoid enforcement, the debtor is in no different position than any other civil litigant, such as a party who obtained a preliminary injunction which is later dissolved. See, *e.g.*, *Knapp Shoes, Inc.* v. *Sylvania Shoe Mfg. Corp.*, 15 F.3d 1222, 1225 (1st Cir.

1994) (merits opinion in case in which preliminary injunction was issued but later dissolved, and court of appeals stayed dissolution pending merits ruling), cert. denied, 517 U.S. 1245 (1996). Second, appealing confirmation of an alternative, confirmable plan is also familiar in civil litigation, where, for example, a plaintiff whose preferred cause of action (and measure of relief) is dismissed, and the plaintiff must decide whether to pursue the second-choice claim and appeal at the end, or dismiss the remaining claim and appeal immediately.[8] "[W]hen a plaintiff has suffered an adverse judgment on the merits as to claims or defendants A, B, and C, which would otherwise be final and appealable were it not for remaining claim or defendant D, he or she may elect to forgo D in order to obtain review of the order respecting A, B, and C." *Camesi* v. *Univ. of Pitt. Med. Ctr.*, 729 F.3d 239, 246 (3d Cir. 2013).

The alternatives petitioner and his amici propose—potentially endless appeals of right for each denial of each amended plan or distinct plan objection—are contrary to Congress's intent in the Bankruptcy Code: to confirm a plan quickly, *e.g.*, 11 U.S.C. 1121(b), achieving the ultimate goals of "provid[ing] the debtor with a fresh start" and increase creditor recoveries. H.R.

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[8] Petitioner's reliance on the chapter 11 "equitable mootness" doctrine is misplaced. The scope of that doctrine is much disputed, and this Court has never determined its constitutionality. *E.g.*, *In re Cont'l Airlines*, 91 F.3d 553, 567-573 (3d Cir. 1996) (en banc) (7-6 decision adopting doctrine over dissent of then-Judge Alito questioning constitutionality of doctrine), cert. denied, 519 U.S. 1057, and reh'g denied, 519 U.S. 1156 (1997). More fundamentally, equitable mootness is inapposite because it bars only plan-objector appeals.

Rep. No. 595, 95th Cong. 1st Sess. 5, 120 (1977). If a confirmable plan is not achievable, a debtor may not belong in a chapter 13 proceeding, and should not be permitted to linger there enjoying countless appeals of confirmation denials, along with an endless automatic stay that costs creditors money. This appeal illustrates such an outcome, as it has lasted two and a half years.

Petitioner wants to have his cake and eat it too: he wants the benefit of finality and automatic right to appeal without the downside of finality latent in civil litigation: having to seek relief to stay the unfavorable ruling. He wants a stay pending appeal without establishing a likelihood of success on the merits. See Fed. R. Civ. P. 65. Had Congress wished to provide chapter 13 petitioners an absolute right to continuation of the automatic stay pending appeal from denial of unconfirmable plans, it would have so provided. Instead, it provided that the stay ceases upon dismissal of the case. The Court should reject petitioner's effort to rewrite the statute. The rule proposed by petitioner would encourage precisely what the single-appeal rule is designed to prevent: the ability "to harass opponents and to clog the courts through a succession of costly and time consuming appeals." See *Flanagan*, 465 U.S. at 263-264.

III. Petitioner Relies On Arguments Against The Single-Appeal Rule That This Court Has Repeatedly Rejected

This Court has consistently reaffirmed the primacy of the single-appeal rule in rejecting contrary policy arguments. These rejected policy arguments are the same that petitioner and his amici now offer as justifications for immediate appealability as of right from denial of plan confirmation.

1. The Court recently reiterated the fundamental cost-benefit analysis reflected in the single-appeal rule: the systemic benefits of one appeal from a final decision outweigh the costs of deferring correction of any individual errors. *Mohawk Indus.*, 558 U.S. at 108-109. "[P]ostjudgment appeals generally suffice to protect the rights of litigants." *Id.* at 109. The fact that a ruling "may burden litigants in ways that are only imperfectly reparable by appellate reversal of a final district court judgment * * * has never sufficed" alone to require interlocutory review. *Digital Equip.*, 511 U.S. at 872.

The Court has already rejected, for example, petitioner's claim that the allegedly "roundabout routes to review" available to him "would be costly and *could* leave all parties in a procedural tangle with unfortunate and irreversible consequences." Pet. Br. 28 (emphasis added). "[T]his Court has declined to find the costs associated with unnecessary litigation to be enough to warrant allowing the immediate appeal of a pretrial order." *Lauro Lines srl* v. *Chasser*, 490 U.S. 495, 499 (1989).

2. The Court has also acknowledged that the single-appeal rule sometimes necessarily results in "asymmetrical" appealability. Cf. Pet. Br. 47-48. In allowing interlocutory appeal of an order denying attachment of a vessel, the Court acknowledged that interlocutory appeal would not lie from an order granting attachment, which presented a "quite different" situation. See *Swift & Co. Packers* v. *Compania Colombia Del Caribe, S.A.*, 339 U.S. 684, 689 (1950). "Whatever similarities or differences there are between plaintiffs

and defendants * * * involve questions of policy for Congress." *Coopers & Lybrand*, 437 U.S. at 476.* Even the Solicitor General concedes that "asymmetry 'happens all the time' in civil appeals." U.S. Br. 25 (quoting *Lindsey* v. *Pinnacle Nat'l Bank (In re Lindsey)*, 726 F.3d 857, 861 (6th Cir. 2013)). This Court has thus deemed unpersuasive petitioner's contention that "[t]reating denials of plan confirmation as nonfinal creates an unfair asymmetry in bankruptcy law." Pet. Br. 47.

In any event, there is no asymmetry, much less unfair asymmetry, in the appealability of plan confirmation proceedings. Either party may appeal when the bankruptcy court has taken an action that finally affects the parties' legal rights: An aggrieved creditor may appeal an order granting confirmation, *United Student Aid Funds* v. *Espinosa*, 559 U.S. 260, 264 (2010), and an aggrieved debtor may appeal a dismissal order. See also II.B, *supra*. At the conclusion of the confirmation proceeding—either confirmation of a viable chapter 13 plan or dismissal for want of one—the losing side may seek discretionary temporary relief to preserve the status quo. Upon dismissal, the debtor

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* Petitioner (Br. 48) misreads *Coopers & Lybrand* as rejecting the application of the collateral doctrine to *avoid* asymmetry. While the Court acknowledged that the death-knell doctrine caused asymmetry, it then expressly held that asymmetry is irrelevant to the jurisdictional inquiry, which turns on Congress's choices as reflected in the applicable statutes. 437 U.S. at 476 & n.28 ("This Court . . . is not authorized to approve or declare judicial modification. * * * The choices fall in the legislative domain." (quoting *Balt. Contractors* v. *Bodinger*, 348 U.S. 176, 181-182 (1955), overruled on other grounds by *Gulfstream Aerospace Corp.* v. *Mayacamas Corp.*, 485 U.S. 271 (1988)).

can ask the Court to grant a stay, Fed. R. Bankr. P. 8007(a)(1)(A), and upon plan confirmation, an aggrieved creditor can ask the bankruptcy court to stay plan consummation, *id.* 8007(e). Neither party is entitled to protection as a matter of right.

3. This Court has enforced the single-appeal rule even when an order constitutes an effective "death knell" to a party's claim. *Coopers & Lybrand*, 437 U.S. at 469-470. In *Coopers & Lybrand*, the Court rejected an appeal of an order denying class certification that was "likely to sound the 'death knell' of the litigation." *Ibid.* Noting that the "death knell" doctrine "would apply equally to the many interlocutory orders in ordinary litigation—rulings on discovery, on venue, on summary judgment" with "such tactical economic significance that a defeat is tantamount to a 'death knell' for the entire case," the Court rejected the doctrine as "indiscriminate," contrary to Congressional intent, and impermissibly founded on an "individualized jurisdictional inquiry." *Id.* at 469-476. The losing argument from *Coopers & Lybrand* underpins petitioner's entire theory: he repeatedly asserts that he has the right to appeal because denial of confirmation of the Third Amended Plan "definitively determined petitioner's substantive right to the relief he sought." *E.g.*, Pet. Br. 10. Jurisdictional inquiries do not depend on guessing whether a ruling is final "as a *practical* matter"; instead, Congress has "made 'finality' the test of appealability." *Coopers & Lybrand*, 437 U.S. at 471-472 (emphasis added).

The Court's cautious approach to creating exceptions to finality further reflects its rejection of policy arguments on which petitioner now relies. The preference for a single appeal can only be overcome by a

"strong" justification, where delayed review "would imperil a substantial public interest" or "some particular value of a high order." *Mohawk Indus.*, 558 U.S. at 107; *Will*, 546 U.S. at 352-353. The justifications petitioner identifies—"the ability of debtors to obtain correction" of erroneous rulings, the ability of bankruptcy courts "to develop legal precedents and rules evenhandedly," (Br. 42-43), or the ability of court of appeals to confront "significant and divisive bankruptcy issues," (BOA Amicus Br. 26-28)—do not rise to the compelling level that justifies variance from the single-appeal rule. To the contrary, it is a *virtue* of the single-appeal rule that it may allow the court of appeals to *avoid* resolving issues when doing becomes unnecessary due to subsequent developments in the case. *Johnson*, 515 U.S. at 309.

The answer is not to create new categories of appeal as of right, but instead to rely on already-existing "safety valves" that allow for addressing "new legal question[s]" and "promptly correcting serious errors." *Mohawk Indus.*, 558 U.S. at 111 (quoting *Digital Equip.*, 511 U.S. at 883) (Court bracketing omitted). With the availability of both Section 1292 and its bankruptcy analogs, Sections 158(a)(3) and (d)(2), two avenues of discretionary interlocutory appeal exist for unsettled legal issues. Indeed, as discussed *supra*, the express statutory "safety valves" for bankruptcy appeals are broader than Section 1292(b).

Petitioner might be right that interlocutory review by the court of appeals would have been warranted based on an unresolved question of law, 28 U.S.C. 158(d)(2)(A)(i), but review by the court of appeals under that provision is only on "direct appeal," and only "if the court of appeals authorizes" it. Petitioner never

sought such review. See Pet. App. 9a. This Court should not create a new category of immediately appealable orders just to save petitioner from the consequences of his procedural choices.

4. In reaffirming the importance of the single-appeal rule, the Court has emphasized the "'sensible policy' of avoid[ing] the obstruction to just claims that would come from permitting the harassment and cost of a succession of separate appeals from the various rulings to which a litigation may give rise." *Will*, 546 U.S. at 350 (quoting *Firestone*, 449 U.S. at 368). Petitioner and his amici, citing statistics purporting to show a paucity of appeals in circuits allowing appeals of right from denials of confirmation, contend that making such rulings appealable would not "threaten to overburden appellate courts." Pet. Br. 45; see also NACBA Amicus Br. 27. That incomplete data has at best marginal persuasive value, and the conclusions petitioner draws from it are illogical.

Petitioner's data presents a narrow picture. Petitioner (Br. 45 n.21) concedes that the data is "limited to cases available on Westlaw," meaning it necessarily excludes unpublished orders and opinions. Also, those circuits lack bankruptcy appellate panels, which could affect a debtor's calculus as to whether to take an appeal.

Petitioner's argument is also flawed because he incorrectly cites data from the Fifth Circuit, (Br. 45 & n.22), but the governing Fifth Circuit case specifically states that appeal will *not* lie from an order denying confirmation that "was not intended to be final—for example, if the order addressed an issue that left the debtor able to file an amended plan." *Bartee* v. *Tara*

Colony Homeowners Ass'n (*In re Bartee*), 212 F.3d 277, 283 (2000). In other words, the Fifth Circuit would have precluded appeal from the order in this case.

In any event, the volume of appeals is irrelevant when considering Congress's intent in the Bankruptcy Code and jurisdictional statutes. For the reasons above, the statutory text and structure establish that the relevant "proceeding" for assessing finality in bankruptcy is the entire plan confirmation process.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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APPENDIX

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1. 11 U.S.C. 1307(c)(5) provides in pertinent part:

Conversion or dismissal.

* * * * *

(c)(5) Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including * * * denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan[.]

2. 11 U.S.C. 1321 provides in pertinent part:

Filing of plan.

The debtor shall file a plan.

3. 11 U.S.C. 1323 provides in pertinent part:

Modification of plan before confirmation.

(a) The debtor may modify the plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of section 1322 of this title.

(b) After the debtor files a modification under this section, the plan as modified becomes the plan.

(c) Any holder of a secured claim that has accepted or rejected the plan is deemed to have accepted or reject-

ed, as the case may be, the plan as modified, unless the modification provides for a change in the rights of such holder from what such rights were under the plan before modification, and such holder changes such holder's previous acceptance or rejection.

4. 11 U.S.C. 1324 provides in pertinent part:

Confirmation hearing.

(a) Except as provided in subsection (b) and after notice, the court shall hold a hearing on confirmation of the plan. A party in interest may object to confirmation of the plan.

(b) The hearing on confirmation of the plan may be held not earlier than 20 days and not later than 45 days after the date of the meeting of creditors under section 341(a), unless the court determines that it would be in the best interests of the creditors and the estate to hold such hearing at an earlier date and there is no objection to such earlier date.

5. 11 U.S.C. 1327 provides in pertinent part:

Effect of confirmation.

(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

6. 28 U.S.C. 157 provides in pertinent part:

Procedures.

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to—

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and

(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter ap-

propriate orders and judgments, subject to review under section 158 of this title.

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

7. 28 U.S.C. 158 provides, in pertinent part:

Appeals.

(a) The district courts of the United States shall have jurisdiction to hear appeals

(1) from final judgments, orders, and decrees;

(2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and

(3) with leave of the court, from other interlocutory orders and decrees; and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred

to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

(b)(1) The judicial council of a circuit shall establish a bankruptcy appellate panel service composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that—

(A) there are insufficient judicial resources available in the circuit; or

(B) establishment of such service would result in undue delay or increased cost to parties in cases under title 11. Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference of the United States a report containing the factual basis of such finding.

(2)(A) A judicial council may reconsider, at any time, the finding described in paragraph (1).

(B) On the request of a majority of the district judges in a circuit for which a bankruptcy appellate panel service is established under paragraph (1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(C) On its own motion, after the expiration of the 3-year period beginning on the date a bankrupt-

cy appellate panel service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(D) If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.

(3) Bankruptcy judges appointed under paragraph (1) shall be appointed and may be reappointed under such paragraph.

(4) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the districts within the circuits for which such panel is established, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate panel service, except that a member of such service may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title.

(6) Appeals may not be heard under this subsection by a panel of the bankruptcy appellate panel service unless the district judges for the district in which the appeals occur, by majority vote, have authorized such service to hear and determine appeals originating in such district.

(c)(1) Subject to subsections (b) and (d)(2), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless—

(A) the appellant elects at the time of filing the appeal; or

(B) any other party elects, not later than 30 days after service of notice of the appeal; to have such appeal heard by the district court.

(2) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

(d)(1) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

(2)(A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that—

(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken; and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

(B) If the bankruptcy court, the district court, or the bankruptcy appellate panel—

(i) on its own motion or on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or

(ii) receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A); then the bankruptcy court, the district court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).

(C) The parties may supplement the certification with a short statement of the basis for the certification.

(D) An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal is pending, issues a stay of such proceeding pending the appeal.

(E) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.

8. 28 U.S.C. 1291 provides, in pertinent part:

Final decisions of district courts.

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

9. 28 U.S.C. 1292(b) provides, in pertinent part:

Interlocutory decisions.

* * * * *

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however,

That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

10. Federal Rule of Bankruptcy Procedure 3015 provides in pertinent part:

Filing, Objection to Confirmation, and Modification of a Plan in a Chapter 12 Family Farmer's Debt Adjustment or a Chapter 13 Individual's Debt Adjustment Case.

(a) CHAPTER 12 PLAN. The debtor may file a chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within the time prescribed by §1221 of the Code.

(b) CHAPTER 13 PLAN. The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.

(c) DATING. Every proposed plan and any modification thereof shall be dated.

(d) NOTICE AND COPIES. The plan or a summary of the plan shall be included with each notice of the hearing on confirmation mailed pursuant to Rule 2002. If required by the court, the debtor shall furnish a sufficient num-

ber of copies to enable the clerk to include a copy of the plan with the notice of the hearing.

(e) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall forthwith transmit to the United States trustee a copy of the plan and any modification thereof filed pursuant to subdivision (a) or (b) of this rule.

(f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH IN THE ABSENCE OF AN OBJECTION. An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, before confirmation of the plan. An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

(g) MODIFICATION OF PLAN AFTER CONFIRMATION. A request to modify a plan pursuant to §1229 or §1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. If required by the court, the proponent shall furnish a sufficient number of copies of

the proposed modification, or a summary thereof, to enable the clerk to include a copy with each notice. Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.